January 8, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Ullman Oil Company

Date of Filing: December 5, 2007

Case No.: TEE-0052

On December 5, 2007, Ullman Oil Company (Ullman) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the firm's request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.[1] The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.[2]

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B[3] and permits reporting firms to rely on reasonable estimates.[4]

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[1] 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

[2] *See* H.R. Rep. NO. 373, 96th Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

[3] Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as "certainty firms", are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be re-selected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

[4] Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens."[5] Since all reporting firms are burdened by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, OHA must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.[6] Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.[7] If firms of all sizes, both large and small, are not included in the survey, the reporting sample's estimates and projections will be unreliable.[8]

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm's financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm's continued viability;[9] the firm's only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;[10] extreme or unusual circumstances disrupt a firm's activities;[11] or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.[12]

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[5] 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

[6] *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

[7] *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990), *see also Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (1997) (stating, "We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief").

[8] *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

[9] *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

[10] *BarMac, Inc. d/b/a Highway Express and Highway Express 2*, 29 DOE ¶ ___ (TEE-0051) (December 3, 2007) (one year extension of time granted where the sole employee responsible for the firm's filings suffered from a severe medical condition); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time granted when two office employees were simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension of time granted when the firm's computer operator broke a wrist).

[11] *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv*., 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm's records inaccessible).

[12] *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

III. Ullman Oil Company's Application for Exception

Ullman filed its Application for Exception on December 5, 2007.[13] After reviewing the Application, we determined that we had insufficient information to evaluate the request, so we contacted Ullman to gather more information.[14]

Ullman, based in Chagrin Falls, Ohio, is a "mid-sized," family-owned heating oil vendor.[15] The firm is currently participating in its fourth reporting sample, which began in August 2004.[16] Ullman requests permanent relief from the EIA reporting requirement on the grounds that completing the monthly reporting form is burdensome.[17]

In its Application, Ullman made several arguments to support its request for exception relief. Ullman recently lost both its controller and assistant controller.[18] The firm has looked for months for qualified people to replace them, but has been unable to fill the positions.[19] According to Ullman, continuing to file Form EIA-782B will cost the company money and cause the day-to-day operations to suffer.[20] "[Ullman] is already months behind in [amassing our] financial data"[21] and it would be a burden to spend four to five hours to compile the information needed to report to DOE.[22] Ullman further believes that the firm is entitled to exception relief because it has reported in four samples.[23] Ullman states that other competitors should be required to "pick up the slack" and that the firm has performed its "civic duty" by completing the forms throughout the years.[24]

IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. Thus, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

None of the arguments advanced by Ullman in support of its exception request are availing. Indeed, we have routinely denied exception applications in precisely these circumstances.[25]

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[13] Letter from Ullman Oil Company to OHA, received December 5, 2007 (Application for Exception).
[14] *See* Memorandum of Telephone Conversation between Kim Ullman, Ullman Oil Company, and Avery R. Webster, OHA, dated December 6, 2007 (Ullman Telephone Memo).
[15] *Id.*
[16] *See* Memorandum of Telephone Conversation between Tammy Heppner, EIA, and Avery R. Webster, OHA, dated December 6, 2007 (Heppner Telephone Memo).
[17] *See* Ullman Telephone Memo.
[18] *See* Application for Exception.
[19] *Id.*
[20] *See* Ullman Telephone Memo.
[21] *See* Ullman Telephone Memo; *See also* Heppner Telephone Memo (Ullman Oil Company is currently five months delinquent in its reporting).
[22] *Id.*
[23] *See* Application for Exception.
[24] *See* Ullman Telephone Memo.
[25] *See The Kiesel Co.*, 29 DOE ¶ 81,019 (2006) (denying a firm relief where it had only one employee, reporting took between one and two days to complete, and reporting interfered with their business); *see also Wavaho Oil Co., Inc.*, 29 DOE ¶ 81,008 (2005) (denying relief where reporting took between two and three days, the firm lacked a computer system to compile data, and could not afford extra help to complete the process), *Hampton Gas Co., Inc.*, 26 DOE ¶ 81,015 (1997) (denying relief where the firm had only a two-person staff and did not maintain the

Regarding Ullman's first argument that the firm does not have the time to complete the form because it lost its key personnel and consists of limited administrative staff, we have previously held that a disruption in business operations resulting from the departure of an employee is not by itself sufficient to indicate that the firm is adversely affected to a significantly greater degree than other firms.[26]

Similarly, Ullman's argument that the reporting requirement will interfere with daily operations is without merit. The Form EIA-782B reporting requirement is not particularly burdensome. It requires little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and a half hours per month to complete the form.[27] Furthermore, Ullman may reduce its reporting burden by employing reasonable estimates.[28]

Finally, Ullman's argument that it has filed the form for many years does not warrant relief. We have consistently held that the length of time a firm has been required to file an EIA form does not justify relief.[29] In sum, Ullman has not demonstrated that the reporting requirement poses a burden significantly greater than that experienced by other firms.

Based on the foregoing, we find that Ullman has not demonstrated that the requirement to file Form EIA-782B is burdensome in a manner that distinguishes it from other similarly affected firms. Accordingly, Ullman's application for exception should be denied.

It is Therefore Ordered That:

(1) The Application for Exception filed by Ullman Oil Company, Case No. TEE-0052, be and hereby is denied.

(2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos
Acting Director
Office of Hearings and Appeals

Date: January 8, 2008

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reporting information as a monthly record), *Jefferson Landmark, Inc.*, 29 DOE ¶ 81,005 (2005) (denying a small, busy firm relief where they "prepare[d] the form using a pen and calculator").

[26] *Bemer Petroleum Corp.*, 29 DOE ¶ ___ (TEE-0044) (July 18, 2007).

[27] Section 10 of the General Instructions to Form EIA-782B.

[28] *See* Section 7 of the General Instructions to Form EIA-782B.

[29] *Emerson Oil Co.*, 29 DOE ¶ ___ (TEE-0043) (April 24, 2007).